

E-FILED
Thursday, 15 February, 2007 11:49:15 AM
Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS, ROCK ISLAND DIVISION

FILED

FEB 15 2007

MICHAEL SMOCK,

Plaintiff,

v.

IOWA INTERSTATE RAILROAD, LTD.,
a Corporation, and NEW HORIZON FS,
INC., a Corporation,

Defendants.

REC'D MAY 25 2007

Court No.

JOHN M. WATERS, Clerk
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JURY DEMAND

07-4007

COMPLAINT AT LAW

COUNT I - FEDERAL EMPLOYERS' LIABILITY ACT

NOW COMES the Plaintiff, MICHAEL SMOCK, by and through his attorneys, GEORGE T. BRUGESS and HOEY & FARINA, P.C., and for his Complaint against the Defendant, IOWA INTERSTATE RAILROAD, LTD., states as follows:

1. Jurisdiction of this Court is invoked under the provisions of Title 45 U.S. Code sec. 56 and Title 28 U.S. Code sec. 1331.

2. This action arises under, and the rights and liabilities of the parties to this cause are governed by, the Federal Employer's Liability Act, 45 U.S.C. sec. 51 et seq.

3. At all times herein the Defendant, IOWA INTERSTATE RAILROAD was and is a railroad corporation doing business in the States of Iowa and Illinois.

4. At all times herein, the Defendant, IOWA INTERSTATE RAILROAD, was a common carrier by railroad engaged in interstate commerce.

5. On November 1, 2005 Plaintiff was performing work for Defendant in connection with, or in furtherance of Defendant's business of interstate commerce and transportation.

6. On November 1, 2005 Plaintiff was ordered to perform railcar switching services for an industry known as NEW HORIZON FS, INC.

7. At that time and place, Plaintiff was required to work along the right-of-way.

8. As Plaintiff was working along the right-of-way, he severely injured his foot.

9. It was the continuing duty of the Defendant, as employer, at the time and place in question, to use ordinary care in furnishing Plaintiff with a safe place to work.

10. In violation of his duty, the Defendant committed one or more of the following negligent acts or omissions:

- (a) failed to provide the Plaintiff with a safe place to work;
- (b) failed to warn the Plaintiff of the hazardous condition at and near New Horizon;
- (c) violated certain safety standards including OSHA regulations, FRA regulations, industry safety standards; and Iowa law which requires the railroad to maintain its tracks in an adequate and safe manner;
- (d) violated its own safety rules, engineering rules and operating rules;
- (e) failed to inspect the track at New Horizon for hazards;
- (f) failed to take precautions to protect employees from defects at New Horizon;

(g) ordered Plaintiff to perform his job duties in an unsafe manner; and

(h) was otherwise careless and negligent.

11. Defendant's failure to provide Plaintiff, MICHAEL SMOCK with a safe place to work by one or more of the aforementioned negligent acts or omissions caused, in whole or in part, Plaintiff's injuries.

12. Defendant's violation of a State or Federal law or regulation is a violation under 45 U.S.C. 54(a) which bars Defendant from raising a defense of contributory negligence.

13. As a consequence, Plaintiff, MICHAEL SMOCK, incurred injuries which have caused and will continue to cause him great pain, suffering, inconvenience, anguish, and disability; as a further result, Plaintiff, MICHAEL SMOCK, has been and will in the future be kept from attending to his ordinary affairs and duties, and has lost and will lose great gains which he otherwise would have made and acquired; as a further result, Plaintiff, MICHAEL SMOCK, has incurred medical, hospital, and related expenses and is reasonably certain to incur further medical, hospital, and related expenses in the future.

14. Plaintiff, MICHAEL SMOCK, demands trial by jury.

WHEREFORE, the Plaintiff, MICHAEL SMOCK, demands judgment in his favor and against Defendant, IOWA INTERSTATE RAILROAD, LTD., in a sum to be determined by the jury plus the costs of this suit.

COUNT II - COMMON LAW NEGLIGENCE

NOW COMES the Plaintiff, MICHAEL SMOCK, by and through his attorneys, GEORGE T. BRUGESS and HOEY & FARINA, P.C. and for his Complaint against the Defendant, NEW HORIZON FS, INC., states as follows:

1. Jurisdiction of this Court is invoked under the provisions of Title 28 U.S. Code sec. 1367.

2. At all times herein, the Defendant, NEW HORIZON was and is a IOWA corporation doing business in the State of Iowa.

3. On November 1, 2005, Plaintiff was invited onto the premises of NEW HORIZON to perform railcar switching services for the benefit of NEW HORIZON.

4. At that time and place Plaintiff was working along the tracks.

5. As Plaintiff was working at NEW HORIZON he severely injured his foot.

6. At all times herein Defendant, NEW HORIZON, had a duty to use ordinary care to avoid exposing Plaintiff to an unreasonable risk of harm.

7. At all times herein, Defendant, NEW HORIZON, knew or should have known of the dangerous conditions of the railroad tracks on its property and taken corrective action or warned of the dangerous condition.

8. In violation of its duties, the Defendant, NEW HORIZON, committed one or more of the following negligent acts or omissions:

- (a) failed to provide the Plaintiff with a safe place to work;
- (b) failed to warn the Plaintiff of the unsafe condition of the tracks;
- (c) violated certain safety standards including OSHA regulations, FRA regulations, industry safety standards; and Iowa law which requires Defendant to maintain its tracks in an adequate and safe manner;
- (d) failed to enforce safety rules and violated its own safety rules;
- (e) required Plaintiff to perform his job duties in an unsafe manner; and
- (f) was otherwise careless and negligent.

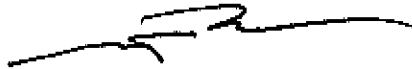
9. Defendant's failure to provide Plaintiff, MICHAEL SMOCK, with a safe place to work by one or more of the aforementioned negligent acts or omissions caused Plaintiff's injuries.

10. As a consequence, Plaintiff, MICHAEL SMOCK, incurred injuries which have caused and will continue to cause him great pain, suffering, inconvenience, anguish, and disability; as a further result, Plaintiff, MICHAEL SMOCK, has been and will in the future be kept from attending to his ordinary affairs and duties, and has lost and will lose great gains which he otherwise would have made and acquired; as a further result, Plaintiff, MICHAEL SMOCK, has incurred medical, hospital, and related expenses and is reasonably certain to incur further medical, hospital, and related expenses in the future.

11. Plaintiff, MICHAEL SMOCK, demands trial by jury.

WHEREFORE, the Plaintiff, MICHAEL SMOCK, demands judgment in his favor and against Defendant, NEW HORIZON FS, INC., in a sum to be determined by the jury plus the costs of this suit.

Respectfully submitted,



George T. Brugess

George T. Brugess
HOEY & FARINA, P.C.
Attorneys for Plaintiff
542 South Dearborn Street
Suite 200
Chicago, Illinois 60605
312/939-1212

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Clerk, U.S. District Court, ILCD

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MICHAEL SMOCK

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) 312.939.1212
George T. Brugess, HOEY & FARINA, P.C.
542 S. Dearborn, Chicago, IL 60640

DEFENDANTS

IOWA INTERSTATE RAILROAD, LTD., a Corporation, and
NEW HORIZON FS, INC., A Corporation

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) 319.297.7515
Edward J. Krug, KRUG LAW FIRM, PLC
401 1st Street, Ste. 330, Cedar Rapids, IA 52406

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input checked="" type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(a)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

45 U.S.C. sec. 51, et. seq

Brief description of cause:

FELA case for injured railroader

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ to be determined

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2.9.07

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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Clerk, U.S. District Court, ILCD

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

District of

ROCK ISLAND DIVISION

MICHAEL SMOCK

V.

**IOWA INTERSTATE RAILROAD, LTD. and
NEW HORIZON FS, INC.**

SUMMONS IN A CIVIL ACTION

REC'D MAY 25 2007

CASE NUMBER: 07-4007

TO: (Name and address of Defendant)

**NEW HORIZON FS, INC.
c/o C T Corporation System
208 South LaSalle Street
Suite 814
Chicago, Illinois 60604**

YOU ARE HEREBY SUMMONED and required to serve on **PLAINTIFF'S ATTORNEY** (name and address)

**George T. Bruggess
HOEY & FARINA, P.C
542 South Dearborn Street
Suite 200
Chicago, Illinois 60605**

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

S/John M. Waters

2/15/07

CLERK

DATE

S/Denise Koester

(By) DEPUTY CLERK